

**ORDINANCE NO.: 1620 (adopted April 4, 2000)**

**(amended by 1664, February 20, 2001)**

**(amended by 1720, December 4, 2001)**

**INTRODUCED BY: Mitchell (Pawlowski)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ESTABLISHING A RESIDENTIAL GROWTH PACING SYSTEM FOR THE CITY OF BRIGHTON.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRIGHTON, COLORADO, AS FOLLOWS:

## **1.0 PURPOSE AND INTENT**

The purpose of the residential growth pacing system is to provide for the uniform distribution of residential building permits at a rate that relates to historic development in Brighton and allows for coordinated control by the City Council based on economic indicators, community desires, and the available public and private resources for development and public infrastructure, and is intended to promote the health, safety, and the general welfare of the City in order to:

- Implement the City's goals, policies, plans, and regulations related to land development;
- Promote orderly growth and provide for harmonious development of the City in accordance with the Comprehensive Plan relating to growth, community character, transportation, infrastructure, community facilities, and economic development;
- Protect private property rights as required by the U.S. and Colorado constitutions, statutes, and case law as applied to a Colorado statutory municipality;
- Facilitate adequate provision of utilities and public facilities such as transportation, water, sewers, drainage, parks and open space, schools, libraries, and other public facilities;
- Promote a more balanced community where there is space to live, recreate and work;
- Ensure that the community character of the City as a desirable place to live and conduct business is not eroded; and

## **2.0 FINDINGS**

The City Council finds as follows:

The adoption of the residential growth pacing system will protect and enhance the quality of the environment, the City's fiscal well-being, and the capacity of City services, while mitigating the negative impacts of growth which result from an excessive rate of growth and lack of balance in the type of residential housing.

- The City budget is based on providing services to additional single-family and multi-family units.
- An accelerating pace of residential development significantly threatens the City's implementation of the Council's Goals and Objectives, the City's Comprehensive Plan, the City's budget, the provision of governmental services such as transportation, parks, and recreation and other elements directly related to the quality of life in the City of Brighton.
- Controlling the rate of residential development will ensure quality growth based on access to adequate public and educational facilities; provide for cost effective management of planning, designing and constructing public utilities and facilities; allow for staffing of services such as police, building inspection and city wide maintenance provided for in the annual budgeting process; and monitor and plan for facilities to lessen traffic congestion.
- The capital improvements planning of the City will be improved with the limitation of building permits to a predictable level and will encourage the enhancement of the physical character of the community.

### **3.0 DEFINITIONS**

3.1 Terms used in this ordinance that are defined in the Brighton Municipal Code (as amended) shall have the same meaning for the purposes of this ordinance, except that the definitions given for terms in Section 3.0 of this ordinance shall prevail whenever there is a conflict. Terms specifically defined in Section 3.0 of this ordinance shall have the meanings ascribed to them for use in administering and applying this ordinance.

#### **3.2 Specific Terms**

3.2.1 Active Residential Development Project means a project for which infrastructure (including water lines, sewer lines, streets, etc.) has been permitted and constructed or one or more building permits for dwelling units has been issued, but the project is not yet completed, such as certificates of occupancy have not been issued for all dwelling units in the project.

3.2.2 Applicant means the person, persons, legal entity or entities submitting an application for a residential allocation pursuant to this Ordinance.

3.2.3 Contact Person means the individual identified on an application for a residential allocation as representing the applicant for purposes of

receiving communications and notices from the City pertaining to the application.

- 3.2.4 Residential Development means construction activity resulting in the production of dwelling units according to plans approved by the City.
- 3.2.5 Residential Project or Project means a residential development contained within a filing of a recorded subdivision.
- 3.2.6 Residential Allocation or Allocation means an awarded approval for the construction of a single residential unit.
- 3.2.7 Residential Development, Multifamily means residential development at a dwelling unit density of more than six (6) units per acre, excluding residential development in manufactured home parks.
- 3.2.8 Residential Development, Single-family means residential development at a dwelling unit density of six (6) units or less per acre, excluding residential development in manufactured home parks.
- 3.2.9 Subdivided Lot means a lot created by a recorded Final Plat.
- 3.2.10 Subdivision means a tract of land containing subdivided lots. For the purposes of this Ordinance a subdivision is further defined as an area contained by common ownership and known by a subdivision name. Multiple, sequential filings or phases in the development of the subdivision under the same ownership, whether or not under the same or similar name shall not be considered as separate subdivisions.

#### **4.0 APPLICABILITY AND EXEMPTIONS**

- 4.1 Residential Allocation Required. Beginning on April 8, 2000, no building permit for construction of a residential dwelling unit or for a structure containing multiple residential dwelling units shall be issued by the City unless the applicant is either:
  - 4.1.1 granted a residential allocation for each dwelling unit subject to the building permit to be issued; or
  - 4.1.2 exempted from the yearly allocation process contained within this ordinance as set forth in Section 4.2 below.
- 4.2 Exempt Development. The following types of development are exempt from the requirements of applying for and securing a residential allocation as specified in Section 5.0 below, prior to the issuance of a building permit:

- 4.2.1 All non-residential development, including agricultural, industrial, institutional and community service, lodging, office, recreation, retail and personal service, temporary, transportation, utility and public service, wholesale, distribution and storage, and accessory uses, and wireless telecommunication facilities.
- 4.2.2 Redevelopment, remodeling, restoration, reconstruction, or replacement of legally established structures that does not increase the number of residential dwelling units that existed previously on the site.
- 4.2.3 Single-family residential development on lots that have a final plat recorded as of the effective date of this ordinance. Recorded plats as of the effective date of this ordinance that are required by the City to be replatted after the effective date of this ordinance shall also be exempt if the replatting does not increase the number of residential lots contained in the original recorded plat.
- 4.2.4 Multifamily residential development that has submitted a complete application for a Preliminary or Final Plat and for a Development Permit prior to the effective date of this ordinance.
- 4.2.5 The placement or replacement of a manufactured home on a space or lot in a manufactured home park in existence prior to the effective date of this ordinance or the replacement of a manufactured home on a space or lot in a manufactured home park created on or after the effective date of this ordinance, if the space or lot received an initial award of a residential development allocation.
- 4.2.6 Residential development exempted by the City Council as part of the approval of an annexation or other valid and enforceable pre-existing contractual agreement. An applicant shall obtain a determination from the City Council that a residential development qualifies for this exemption as provided in Sections 4.3 and 4.5 of this ordinance.
- 4.2.7 Residential development determined by the City Council to be of special merit. An applicant shall obtain a determination from the City Council that a residential development qualifies for this exemption as provided in Section 4.4 of this ordinance.
- 4.2.8 Residential development in which a property owner is requesting no more than one building permit for a single dwelling unit in any one calendar year. For purposes of this exemption, a lot owned by any person, persons, legal entity or entities or any combination thereof that has a common

ownership interest of more than 50 percent in each entity shall be deemed to have the same property owner.

4.2.9 Dwelling units located in the DT – Downtown District.

4.2.10 Projects sponsored by the Brighton Housing Authority

4.2.11 Residential development located within the “in-fill” line as indicated on Exhibit A, which by this reference is incorporated herein.

4.3 Exemptions for Annexations. An applicant desiring an exemption from the annual allocation process, may, in conjunction with the petition for annexation, file a written application for exemption with the Director of Community Development. Such applications shall be filed on a form furnished by the Community Development Department and shall provide written justification as to how the request fulfills the criteria set forth in Subsection 4.3.2. Included with the application for exemption, the applicant shall submit a multi-year phasing plan for approval by the City Council as part of the annexation agreement, as required in Subsection 4.3.3. The burden of proof shall be upon the applicant to present the case that the exemption is justified, and to supply information deemed necessary for that purpose.

4.3.1 Action by City Council. Requests for exemptions received as part of a new annexation request shall be acted upon by City Council as part of its action on the annexation. The application for exemption shall be reviewed by the Exemption Committee consisting of the Director of Community Development, the City Manager or his designee, the City Attorney or his designee, and such other representatives of the Department of Community Development as deemed necessary by the Director. The Exemption Committee shall evaluate the requested exemption and act thereon after consideration of the application and such evidence as the Committee shall require, by recommending approval, approval with conditions, or denial to the City Council.

4.3.2 Criteria for Exemptions for Annexations. The City Council may act to approve a request for exemption at the time of annexation only if it meets one or more of the following criteria:

- a. The request contributes to the maintenance or expansion of the community’s economic base through the provision of new, permanent employment opportunities or sets forth a specifically documented need to support economic expansion.
- b. Approval of the application will result in the dedication, funding or construction guaranteed by a letter of credit or other guarantee approved by the City Council, of extraordinary, significant and

essential public improvements, infrastructure or facilities; including by illustration, roads, water rights, water and/or sewer lines, storm drainage, community greenbelt or parks. “Extraordinary, significant and essential public improvements, infrastructure or facilities” shall mean such infrastructure, improvements or facilities which serve community or regional needs in a manner clearly and substantially greater than what would be ordinarily required of the development by the ordinances and regulations of the City in effect at the time of the application for annexation; or, infrastructure, improvements or facilities which provide for unique and significant City services, facilities and improvements that are urgently needed by the City or are needed to protect existing City services, facilities, utilities or improvements.

- c. The residential development is proposed in an annexation deemed by the City Council to be necessary and essential to the protection of the City’s corporate boundaries as defined in the City’s Comprehensive Plan. “Protection of existing corporate boundaries” shall mean a proposed annexation and/or development that if developed outside the corporate boundaries of the City, would result in significant negative impacts on the policies and public interests of the City as set forth in the Comprehensive Plan.
- d. The request for exemption is based on a documented housing market study, upon which the City Council may identify community-housing goals deserving particular attention such as, but not limited to, senior or accessible housing, work force housing or other housing need so documented.

4.3.3 Multi-Year Phasing Plan Required. Every request for an exemption as part of a new annexation request shall include a multi-year phasing plan setting forth the maximum number of residential units to be built during each year of the development, through build-out. The City Council shall consider the multi-year phasing plan as part of its consideration of the exemption request. No exemption shall be approved unless and until the City Council approves the multi-year phasing plan.

4.4 Exemptions for Residential Development of Special Merit. An applicant desiring an exemption from the annual allocation process, based on special merit, may file a written application for exemption with the Director of Community Development. Such application shall be filed on a form furnished by the Community Development Department and shall provide written justification as to how the request fulfills the criteria set forth in Subsection 4.3.2. Included with the application for exemption, the applicant shall submit a multi-year phasing plan for approval by the City Council as part of the approval of the application for exemption required in Section 4.3.3. The burden of proof shall be upon the

applicant to present the case that the exemption is justified, and to supply information deemed necessary for that purpose.

- 4.4.1 Action by City Council. Requests for exemptions based on special merit shall be forwarded to the City Council for action at a regular City Council meeting. The application for exemption shall be reviewed by the Exemption Committee consisting of the Director of Community Development, the City Manager or his designee, the City Attorney or his designee, and such representatives of the Department of Community Development as deemed necessary by the Director. The Exemption Committee shall evaluate the requested exemption and act thereon after consideration of the application and such evidence as the Committee shall require, by recommending approval, approval with conditions, or denial to the City Council.
- 4.4.2 Public Hearing. Prior to action on any request for exemption based on Special Merit, the City Council shall hold a public hearing. Notice of the public hearing shall be given in accordance with Section II., Subsection (I)(2)(f) of the Zoning Regulations (as amended).
- 4.4.3 Criteria for Exemptions Based on Special Merit. The City Council may act to approve a request for exemption based on Special Merit only if it meets one or more of the following criteria:
  - a. The request contributes to the maintenance or expansion of the community's economic base through the provision of new, permanent employment opportunities or sets forth a specifically documented need to support economic expansion.
  - b. Approval of the application will result in the dedication, funding or construction guaranteed by a letter of credit or other guarantee approved by the City Council, of extraordinary, significant and essential public improvements, infrastructure or facilities; including by illustration, roads, water rights, water and/or sewer lines, storm drainage, community greenbelt or parks. "Extraordinary, significant and essential public improvements, infrastructure or facilities" shall mean such infrastructure, improvements or facilities which serve community or regional needs in a manner clearly and substantially greater than what would be ordinarily required of the development by the ordinances and regulations of the City in effect at the time of the application for the exemption; or, infrastructure, improvements or facilities which provide for unique and significant City services, facilities and improvements that are urgently needed by the City or are needed to protect existing City services, facilities, utilities or improvements.

- c. The application is based on a documented housing market study, upon which the City Council may identify community-housing goals deserving particular attention such as, but not limited to, senior or accessible housing, work force housing or other housing need so documented. Special Merit status will be approved only if a minimum of 30% of the proposed development provides for and meets the special housing needs identified and approved by the City Council.
- d. If an exemption from allocation is approved based on special merit, no change may be made in the allocation of residential units to the community's special housing needs without prior approval by the City Council.

4.4.4 Multi-Year Phasing Plan Required. Every request for an exemption based on special merit shall include a multi-year phasing plan setting forth the maximum number of residential units to be built during each year of the development, through build-out. The City Council shall consider the multi-year phasing plan as part of its consideration of the exemption request. No exemption shall be approved unless and until the City Council approves the multi-year phasing plan.

4.5 Exemptions for Valid and Enforceable Pre-existing Contractual Agreements. An applicant desiring an exemption from the annual allocation based on a valid and enforceable pre-existing contractual agreement with the City or binding on the City shall file a written application for exemption with the Director of Community Development. Such application shall be filed on a form furnished by the Community Development Department and shall be signed by the owner(s) of the property for which the exemption is sought and by all parties to the contractual agreement other than the City. The application shall include all information required by the application, a copy of the contractual agreement upon which the request is made, proof of the applicant's compliance with the terms and conditions of the contractual agreement as set forth in Subsection 4.5.3 and such other information requested by the City. Included with the application for exemption, the applicant shall submit a multi-year phasing plan for approval by the City Council as part of the approval of the application for exemption as required in subsection 4.5.4. The burden of proof shall be upon the applicant to present the case that the exemption is required by the terms of the contract, and to supply all information deemed necessary for that purpose.

4.5.1 Action by City Council. Requests for exemptions based on a valid and enforceable pre-existing contractual agreement shall be acted upon by City Council after recommendation from the Exemption Committee. The application for exemption shall be reviewed by the Exemption Committee consisting of the Director of Community Development, the City Manager or his designee, the City Attorney or his designee, and such other representatives of the Department of Community Development as



deemed necessary by the Director. The Exemption Committee shall evaluate the requested exemption and act thereon after consideration of the application and such evidence as the Committee shall require, by recommending approval, approval with conditions or denial to the City Council. Final action on an exemption based on a valid and enforceable pre-existing contractual agreement is at the sole discretion of City Council. The City Council may elect to approve all or a portion of the exemption request.

- 4.5.2 Public Hearing. Prior to action on any application for exemption based on a valid and enforceable pre-existing contractual agreement, the City Council shall hold a public hearing on the application. Notice of the public hearing shall be given in accordance with Section II, subsection (l)(2)(f) of the Zoning Regulations (as the same may be amended from time to time).
- 4.5.3 Criteria for Exemptions for Valid and Enforceable Pre-existing Contractual Agreement. The City Council may act to approve a request for exemption if it meets the following criteria:
  - a. The contractual agreement is still valid and in force and effect.
  - b. The applicant, including the owner of the property and all other parties to the contractual agreement, other than the City, are in full compliance with all terms and conditions of the contractual agreement, and any amendments or additions thereto.
  - c. The contractual agreement, by its terms, reasonably provides for the requested exemption.
- 4.5.4 Multi-Year Phasing Plan Required. Every application for an exemption based on a valid and enforceable pre-existing contractual agreement shall include a multi-year phasing plan setting forth the maximum number of residential units to be built during each year of the development, through build-out. The City Council shall consider the multi-year phasing plan as part of its consideration of the exemption application. No exemption shall be approved unless and until the City Council approves the multi-year phasing plan.
- 4.5.5 Nothing herein shall be construed to authorize or permit applications for modification of an existing contract or executory contract.
- 4.6. Vested Rights. Any residential development which has been granted “Vested Rights” after the effective date of this Ordinance in accordance with the Brighton Municipal Code (as amended), and relevant statutory provisions shall be subject to the provisions of this Ordinance.

## **5.0 RESIDENTIAL ALLOCATIONS**

- 5.1 Allocation. For calendar year 2000, the allocation for residential units shall be four hundred and eighty-five (485). Commencing on the effective date of this ordinance, a residential development allocation must be obtained prior to issuance of any building permit(s) for residential dwelling units, as required by Section 4.1 of this ordinance.
- 5.2 Annual Allocations. Prior to the end of each calendar year, the City Council will establish, by resolution, the maximum residential building permit allocations available for the following calendar year. Said annual allocation may assign a number or percentage to a specified housing category. Prior to establishing the maximum number of residential building permits in the annual allocation, the City Council shall hold a public hearing thereon. Notice of the public hearing shall be given in accordance with Section II., Subsection (I)(2)(f) of the Zoning Regulations (as the same may be amended from time to time). The City Council may consider the following factors in determining the maximum annual residential building permits subject to the allocation:
- a. Projected municipal revenues and expenditures in the following year, and progress in providing infrastructure and services to cure existing deficiencies and to serve new development, including, but not limited to, water, sewer, drainage and other community facilities and services.
  - b. Expansion or contraction of the City's commercial and/or industrial economic base, and the effect thereof on tax revenues to the City.
  - c. Traffic conditions and school occupancy conditions.
  - d. Data indicating the number of residential dwelling units built in the City during the prior year by type and location, the current reservations of residential development allocations for future years, and the availability of staff to process residential development applications.
  - e. Past and projected growth in the local and regional area, changes in the cost of living, and other economic indicators including job growth.
  - f. Annexations approved after January 1, 2000 that have not been exempted from the requirement to obtain allocations.
  - g. Residential Estimates for Proposed Developments submitted in accordance with Section 6.1 hereof.
  - h. Multi-year phasing plans approved as part of an exemption as set forth in subsections 4.3.3, 4.4.4, and 4.5.4 hereof.

- i. The number of residential building permits that may be issued in the following calendar year that are exempt from the annual residential building permit allocation in accordance with Section 4.2 above.
  - j. The recommendation of the City staff on the allocation to be made available and on proposals for procedural or substantive changes to the administration and operation of this ordinance.
- 5.3. Revision to Annual Allocation. The City Council may, by resolution, revise the allocation established for a given calendar year if it determines that economic conditions justify such a revision, or if it determines that the protection of the health, safety, or welfare of the citizenry necessitates such a revision. Prior to revising the annual allocation, the City Council shall hold a public hearing. Notice of the public hearing shall be given in accordance with Section II, Subsection (I)(2)(f) of the Zoning Regulations (as the same may be amended from time to time).
- 5.4. Housing Mix Category
  - 5.4.1 Purpose. This category is intended to promote an adequate mix of housing types in the City through making residential development allocations available for specific housing types that are unavailable or have minimal availability in the City's housing inventory.
  - 5.4.2 Assigning Allocations to Housing Mix Category. As part of establishing the maximum annual residential development allocation, the City Council may deem it appropriate to assign all or a portion of the allocation to the Housing Mix Category, and to specify the housing type eligible to apply for these allocations.
  - 5.4.3 Housing Mix Category. To be eligible to apply for an allocation under this category, applications shall be for no more than 200 residential dwelling units per year and for no more than a three-year time period, and must satisfy one or more of the following criteria:
    - a. Single Family Dwellings of at least 3,000 square feet or more gross livable area (including unfinished areas but excluding garages) that are constructed on lots containing at least 10,000 square feet.
    - b. Affordable housing which shall have a base price of not greater than 50% of the median new home price in the Denver metropolitan area.
    - c. Accessible or Senior housing in conformance with Ordinance No. 1626 (Residential Design Standards), as amended.
    - d. Residential developments that dedicate open space or provide permanent agricultural easements equal to fifty percent (50%) or more of the area proposed for development.

- e. Multi-Family dwelling units, including town homes, and condominiums or apartments with three or more units per building.

## **6.0 ADMINISTRATION OF RESIDENTIAL ESTIMATES OF ALLOCATIONS AND REQUESTS FOR ALLOCATIONS**

### **6.1 Residential Estimates for Allocations through Build-out of a Subdivision.**

- 6.1.1 Residential Estimates for Proposed Development. Every application for Preliminary Plat approval for residential development shall include an annual estimate of the residential allocation expected to be requested, commencing with the year in which the plat is expected to be recorded and for all subsequent years necessary to complete building in the proposed development. The annual estimate shall not exceed the limits specified in Subsection 6.1.2 of this ordinance.
- 6.1.2 Limit on Estimates. The annual estimate required by this Section 6.1 shall not exceed the following number of units for each subdivision:
  - (1) 0 to 80 acres: 50 dwelling units per year, per subdivision
  - (2) 81 – 160 acres: 75 dwelling units per year, per subdivision
  - (3) Over 160 acres: 100 units per year, per subdivision
  - (4) 200 units from the Housing Mix Category described in Section 5.4 of this ordinance
- 6.1.3 Revisions to and Extension of Residential Estimates. Notwithstanding the requirement for submittal of a residential estimate for development as provided in this Section 6.1, a person intending to request an allocation of building permits for any given year shall submit an allocation application as specified in 6.2 below. If the application for allocation exceeds the previously submitted residential estimate, the number of permits in excess of the residential estimate shall be approved only if there are allocations available after all other requests are awarded, and shall be awarded on a pro-rata basis.

### **6.2 Submittal of Allocation Applications.**

- 6.2.1 Award Cycles. The annual building permit allocations shall be awarded twice during the calendar year; the first award or cycle shall be as of January 1 and the second award or cycle shall be as of July 1. Applicants shall file with the Community Development Department an allocation application for each subdivision for which an allocation is requested on a form provided by the Community Development Department. The total allocations requested for each separate subdivision in each calendar year shall not exceed the maximum limitation contained in Subsection 6.1.2 above.

#### 6.2.2 Submittal Deadlines for Allocation Requests.

- a. Cycle One (January through June). To be eligible for an allocation in Cycle One, a complete application and the applicable fees therefor shall be filed with the Community Development Department no later than the last business day of October in the allocation year.
- b. Cycle Two (July through December). To be eligible for an allocation in Cycle Two, a complete application and the applicable fees therefor shall be filed with the Community Development Department no later than the last business day of April in the allocation year.

6.2.3 If, in a period between allocation cycles, the number of building permit allocations granted is less than the total available allocations and the number of anticipated allocation requests (as projected by the Community Development Department) for subdivisions with final plats is less than or equal to the available allocations for that cycle, the City Council, at its sole discretion may allocate up to fifty (50) units per single-family development at the time the final plat is approved, or anytime thereafter. These allocations, if any, shall be deducted from the available allocations for the following cycle.

6.3 Number of Applications. An applicant may submit one or more allocation applications in any given cycle, provided that each application is for dwelling units in a separate subdivision and no more than one application shall be submitted for any individual lot.

6.4 Eligibility for Allocations. Applications determined by the Community Development Department as complying with the requirements in Section 7.1 of this Ordinance shall be eligible to receive allocations. The Community Development Department shall reject applications not in compliance.

6.5 Available Allocations. The allocations available in any given cycle shall consist of one-half of the annual allocations for that calendar year, as initially determined or as revised by City Council, and shall include any unused allocations from the previous year that were either not awarded, returned or became invalid as provided in this Section 6.10 and Section 6.11.

6.6 Award of Allocations for Each Cycle; Proration.

6.6.1 Cycle One (January through June). One-half of the yearly residential building permit allocations as set by the City Council will be awarded no later than the last business day of December of the previous year to the

applicants for allocations in accordance with the terms of this ordinance. If the total number of residential building permit allocations in all applications therefor is equal to or less than the allocations available, the City shall award allocations in the amount requested to eligible applicants, subject to the maximums stated in the City Council Resolution setting the number of allocations for that year, the allowance for awards to “end of filing” requests stated in Subsection 6.8.3, and the penalties stated in Subsection 6.9.2 of this ordinance.

6.6.2 Cycle Two (July through December). One-half of the yearly residential building permit allocations as set by the City Council will be awarded no later than the last business day of June of the previous year to the applicants for allocations in accordance with the terms of this ordinance. If the total number of residential building permit allocations is equal to or less than the allocations available, the City shall award allocations in the amount requested to eligible applicants, subject to the maximums stated in the City Council Resolution setting the number of allocations for that year, the allowance for awards to “end of filing” requests stated in Subsection 6.6.4, and the penalties stated in Subsection 6.9.2 of this Ordinance.

6.6.3 Prorating. If the total number of the allocations requested for a given year exceeds the number of available residential building permit allocations for that year, the City shall distribute the allocations in the following priority order: (1) end of filing requests, (2) active residential development projects, (3) all other eligible applicants with approved subdivisions that are not yet active residential developments. The City shall distribute the allocations to all eligible applicants within each category, in order of priority, on a pro rata basis, subject to the maximums stated in the City Council Resolution for that year and the maximums stated in Section 6.1.2, the allowance for awards to “end of filing” requests stated in Subsection 6.6.4, and the penalties stated in Subsection 6.9.2 of this ordinance. For example, if applicants request 385 allocations, but only 325 allocations are available, the following table provides several scenarios to demonstrate the pro rata distribution among applicants.

#### EXAMPLE

	REQUESTS (385)	ALLOCATIONS AVAILABLE (325) PRO RATA SHARE
Applicant A	60 or 15.6%	15.6% of 325 = 51 allocations
Applicant B	45 or 11.7%	11.7% of 325 = 38 allocations
Applicant C	55 or 14.2%	14.2% of 325 = 46 allocations
Applicant D	50 or 13%	13% of 325 = 42 allocations
Applicant E	45 or 11.7%	11.7% of 325 = 38 allocations
Applicant F	45 or 11.7%	11.7% of 325 = 38 allocations

Applicant G	25 or 6.5%	6.5% of 325 = 21 allocations
Applicant H	60 or 15.6%	15.6% of 325 = 51 allocations
Total	385	325

6.6.4 End of Filing Requests. An applicant submitting an application for an allocation for a subdivision filing that has ten (10) or fewer lots for which an allocation has not yet been received may request “end of filing” status as part of the application. If the application for an allocation is determined to be eligible as provided under Section 7.5 of this Ordinance, and meets the criteria in this Section 6.6.4 for “end of filing” status, the City shall award allocations to these applications prior to awarding allocations to all other eligible applications and prior to any prorating required by Section 6.6.3 of this Ordinance.

6.7 Notification of Awards. Notification of awards shall be made for each cycle as follows:

6.7.1 Posting. The City shall publish the allocation awards by posting a listing at the Brighton City Hall.

6.7.2 Notification to Applicants. The listing of the allocation awards shall be mailed by First Class U.S. Mail to the designated contact person for each application filed for each cycle, where the application was determined to be complete and eligible.

6.8 Validity.

6.8.1 An allocation shall remain valid if both of the following criteria are met:

- a. A complete building permit application is submitted no later than 45 calendar days from the end of the cycle in which the allocation is awarded. If no building permit application has been filed by the 45-day limit, and if the allocation has not been returned to the City as provided in Section 6.11, the allocation shall lapse and be invalid; and
- b. A building permit is issued for the allocation no later than five (5) business days prior to the end of the cycle in which the allocation is awarded. If a building permit has not been issued by the 5-day limit, and if the allocation has not been returned to the City as provided in Section 6.11, the allocation shall lapse and be invalid.

6.9 Unused Allocations

6.9.1 Returning Unused Allocations If Building Permit Not Issued. No later than 45 calendar days from the end of a given cycle, applicants may return allocations awarded for that cycle for which building permits have not

been applied for or issued. Applicants shall provide written notice that they are returning allocations on a form provided by the Community Development Department.

6.9.2 Penalties for Failure to Return Unused Allocations. If an applicant allows allocations to become invalid as provided in Section 6.10 of this ordinance, the City shall reduce future allocation awards to an applicant in a given cycle by a number equal to the number of allocations that the applicant allowed to become invalid in the preceding cycle.

6.10 Staff Review. The Community Development Department will contact each holder of an award for residential building permit allocations for an update on the status of awarded allocations in the cycle to determine if building permits will be pulled for the awarded allocations within the cycle. Holders of allocations in Cycle One will be contacted in March and holders of allocations in Cycle Two will be contacted in September. The failure of the Department to request an update does not effect the applicability and enforceability of Section 6.9 regarding unused allocations.

## **7.0 APPLICATION PROCEDURES**

7.1 Qualification Requirements. Applicants shall fulfill the following requirements prior to filing an application for residential development allocations:

- a. Recordation of a Final Plat for any lot for which allocations are requested; and
- b. Conformance with the applicable development and design standards of Smart Growth and all other applicable laws, regulations, Ordinances, and resolutions of the City.

7.2 Submittal Requirements. Applicants shall submit written requests for residential development allocations on an application form provided by the Community Development Department. Such application shall include, as a minimum, the following information and submittal materials:

7.2.1 The name, address, and telephone number, and signature for the following:

- a. Applicant
- b. Property Owner, if different from the applicant

7.2.2 The name, address and telephone number for the following:

- a. Developer, if different from the applicant
- b. Builder, if different from the applicant
- c. Contact Person, as defined in Section 3.2.3



- 7.2.3 The approval date, subdivision name, and development permits pertinent to the application, as evidence that the qualification criteria in Section 7.1 have been met.
- 7.2.4 The residential estimate of allocations as required by Sections 6.1 and 6.4. If the residential estimate was previously submitted as part of the development process, a copy of the schedule shall be submitted.
- 7.2.5 Vicinity map to scale with north arrow.
- 7.2.6 Approved subdivision plat map for the development site for which an allocation is being requested. The lots for which allocations are being requested shall be indicated on the notes of the approved subdivision plat.
- 7.2.7. Other documentation and information required by the Community Development Department in order to evaluate the application, apply the requirements and procedures, and assure compliance with the intent and purposes of this Ordinance.
- 7.3 Waiver of Submittal Requirements. The City may waive specific submittal requirements based on a determination by the Director that the item is inappropriate or unnecessary for evaluation of the allocation request due to the size of the request or other such factors.
- 7.4 Fee For Review of Application. A nonrefundable processing fee in the amount as specified in the City's annual Fee Resolution shall accompany each allocation application. The application processing fee shall be in addition to all other City development processing and permit fees.
- 7.5 Determination of Eligibility. The Community Development Department shall evaluate each application received and shall determine the application to be eligible for allocations if it meets all of the following criteria:
  - a. Application has been submitted by the required time deadline stated in Section 6.2 and 6.4 of this ordinance.
  - b. Application meets the qualification requirements set forth in Section 7.1 of this ordinance.
  - c. Application includes all of the items required by Section 7.2, except for items waived in accordance with Section 7.3, of this ordinance.
  - d. Application fee required by Section 7.4 of this ordinance has been paid.

- e. The applicant is not under penalty for failure to return unused allocations as provided in Section 6.9.

- 7.6 Rejection of Ineligible Applications; Notification. If the City determines that an application for an allocation does not meet the eligibility requirements contained in Section 7.1, the Community Development Director shall reject the application in its entirety.

The Community Development Department shall return by U.S. Mail any application for an allocation determined to be ineligible no later than seven business days following the closing day for receiving applications, for each award cycle. Ineligible applications shall not be awarded allocations.

- 7.7 Withdrawal of Allocation Application. An applicant may elect to withdraw an allocation application without prejudice at any time prior to an award being made.

## **8.0 GENERAL ADMINISTRATION AND ENFORCEMENT**

- 8.1 Issuance of Building Permits. Unless exempted from the allocation process by Section 4.0 of this Ordinance or if an amendment to an approved allocation request has been approved, each dwelling unit shall have a corresponding residential allocation before a building permit allowing construction of the dwelling unit is issued. Building permits shall be issued subject to compliance with all other applicable City Ordinances and regulations.

- 8.2 Limits on Transferability of Allocations.

- 8.2.1 Allocations Restricted to Lots, Units or Spaces and Award Cycles. After an allocation becomes valid with the issuance of a building permit, the allocation shall be applicable only to that subdivided lot, unit or space identified in the approved building permit application and only for the cycle in which it was awarded. Allocations may not be transferred between subdivided lots, units, spaces, or award cycles.

- 8.2.2 Transfers between Property Owners. A valid allocation may be transferred to a lot buyer, upon conveyance of the lot for which it was awarded, and may be transferred to the next award cycle, with approval of the City. The dwelling unit to be built after the transfer shall comply with all City requirements and the building permit application previously approved by the City for the lot at the time the allocation was awarded, except as otherwise provided in this Section.

- 8.3 Validity of Allocation.

- 8.3.1 Issuance of Building Permits. Once a building permit is issued, the corresponding residential development allocation shall remain valid, except as otherwise provided in Section 6.10. All applicable Municipal Code (as amended) and Ordinances shall govern completion of the residential unit or units associated with the building permit.
- 8.3.2 Expiration of Building Permits; Effect on Allocation. If a building permit for a residential unit for which construction has not commenced is allowed to expire, and this residential unit had a residential development allocation, the allocation shall also expire and shall no longer be valid for the purposes of obtaining a building permit.
- 8.4 Enforcement.
- 8.4.1 It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or land area in violation of any provision of this Ordinance.
- 8.4.2 No permit, certificate, license or other document or oral approval, the use of which is subject to the provisions of these regulations, shall be issued by any department, agency, board, City Council or the Planning Commission until it has been determined that all substantive requirements of this Ordinance have been met and all procedures have been followed.
- 8.4.3 Offenses committed and all liabilities incurred prior to the effective date of any subsequent amendments to this Ordinance shall be treated as though all prior applicable regulations were in full force and effect for the purpose of sustaining any suit, action or prosecution with respect to such offenses and liabilities.
- 8.5 Revocation of Residential Allocation. A residential allocation may be revoked as follows:
- 8.5.1 The City Manager shall have the authority to revoke a residential allocation for the violation of any provision of this Ordinance or of any condition(s) imposed in the granting of the residential allocation. Prior to revocation, the City Manager shall send written notice of intent to revoke, by Certified Mail, to the holder of the allocation. The notice shall set forth the basis for the revocation. The holder of the allocation may request a hearing before the Manager by filing a written request within fifteen (15) calendar days from the date of sending such notice. The hearing shall be held within ten (10) calendar days from receipt of said request.
- 8.5.2 At the conclusion of the notice period, or if a hearing is held, after the hearing is conducted, the City Manager shall make written findings and shall take action to either revoke or to cancel the revocation of the

residential allocation. The Community Development Department shall send written notice of the Manager's decision to the holder of the allocation by Certified Mail.

#### **8.6 Violations and penalties; civil enforcement**

8.6.1 It shall be unlawful for any person to violate the provisions of this Ordinance or the terms of the Code (as amended) or standards adopted and incorporated into this ordinance. Whenever, in any section of this Ordinance or in any section of any rule or regulation of any Code (as amended) or standard adopted and incorporated in this Ordinance the doing of an act is required, prohibited, or declared to be unlawful, any person who shall be convicted of a violation thereof shall, for each offense, be punished as provided in the Municipal Code (as amended). Each separate day during which any violation occurs or continues shall constitute a separate offense so punishable.

8.6.2 In addition to the penalties set forth in Section 9.6.1, the City Attorney is authorized to bring an action before any court of suitable jurisdiction to abate, remove, or enjoin such violation and to recover damages, costs, and reasonable attorney's fees incurred in the abatement and removal of such violation.

### **9.0 RELATIONSHIP TO OTHER ORDINANCES**

9.1 Conflict. To the extent a conflict exists between this Ordinance and any other City Ordinance or regulation, the more restrictive provision or provisions are deemed to be controlling. Otherwise, all provisions and procedures contained in existing Ordinances and regulations shall remain in full force and effect.

9.2 Compliance with Other Ordinances. In addition to the requirements of this Ordinance, applicants shall comply with all other applicable City Ordinances and regulations regarding land use, land development, and issuance of building permits.

### **10.0 CONSTITUTIONAL VALIDITY**

If any portion of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this Ordinance and each part hereof irrespective of this fact that any one part be declared unconstitutional or invalid.